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ABSTRACT

The First Amendment of the U.S. Constitution prohibits both state-sponsored religion and state censorship of expression. In the waning days of June 1995, the U.S. Supreme Court released its landmark decision in "Rosenberger v. University of Virginia," in which it ruled as unconstitutional student organization funding systems in which some student organization expression (e.g., publications, speakers, posters) was paid for by the university, but that by student religious organizations was not. While the Court was careful to limit its decision to direct funding of expression, some organizations took the decision as a signal that the Court was prepared to further breech the traditional wall between the state and funding of religious groups. This paper traces the evolution of case law concerning public support of groups and activities whose core purpose is the exposition of a particular religious doctrine. The paper then examines the central question faced by the Court in "Rosenberger" and issues raised by its ruling, as well as various interpretations and misinterpretations of that ruling. It concludes by examining specific ways in which the Court's reasoning in "Rosenberger" and a subsequent case represents a significant departure from prior Court doctrine and, arguably, from the intent of the Framers. (Contains 2 notes and 28 references.) (NKA)

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A FIRST AMENDMENT DIVIDED:

STATE UNIVERSITY CAMPUSES IN THE WAKE OF

ROSENBERGER V. UNIVERSITY OF VIRGINIA

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A FIRST AMENDMENT DIVIDED: STATE UNIVERSITY CAMPUSES IN THE WAKE OF *ROSENBERGER V. UNIVERSITY OF VIRGINIA*

The First Amendment of the U.S. Constitution prohibits both state-sponsored religion and state censorship of expression. Seldom have these two prohibitions come into conflict with each other; however, that is the dilemma frequently presented by questions involving state college and university funding of student religious organizations.

In the waning days of June 1995, the U.S. Supreme Court released its landmark decision in *Rosenberger v. University of Virginia*, in which it ruled as unconstitutional student organization funding systems in which some student organization expression (e.g., publications, speakers, posters) was paid for by the university, but that by student religious organizations was not. While the Court was careful to limit its decision to direct funding of expression (as opposed to funding of groups that may, in turn, decide to use some of the money for expression), some organizations took the decision as a signal that the Court was prepared to further breech the traditional wall between the state and funding of religious groups.

Many state universities that provide funding of student groups on campus deny that funding to groups whose primary mission is the exposition of a particular religious belief or the advancement of partisan politics. Following *Rosenberger*, some of those universities were sued by groups that had been denied funding based on their focus on religion, even if the funding systems were modified to conform with the Supreme Court mandate. Among them was Miami University, despite its recently-introduced fund for student expression, which was available to religious groups. It seems inevitable, then that the next logical step beyond *Rosenberger* – the

constitutionality of state university funding of student religious organizations -- is a matter the U.S. Supreme Court will be asked to rule on in the near future.

This paper traces the evolution of case law concerning public support of groups and activities whose core purpose is the exposition of a particular religious doctrine. It then examines the central question faced by the Court in *Rosenberger*, and issues raised by its ruling, as well as various interpretations and misinterpretations of that ruling. It concludes by examining specific ways in which the Court's reasoning in *Rosenberger* and a subsequent case represents a significant departure from prior Court doctrine, and, the author would argue, from the intent of the Framers.

History: Forums to Union Dues

The First Amendment presents policy-makers with somewhat of a practical conundrum, in that it promises both that the government will not support religion (through the so-called "Establishment" clause) nor prevent its practice (through the "Free Exercise" clause). For its map for navigating the often-treacherous waters between the two, the U.S. Supreme Court has relied to a great extent upon a history of the First Amendment researched by Justices Black and Rutledge (Hamblin, 2000). According to the so-called Black-Rutledge Theory, Thomas Jefferson and James Madison were the chief architects of the Amendment. Jefferson, the theory asserted, feared religion's encroachments upon government, and favored a "wall of separation"[1] between church and state. Madison, on the other hand, saw Jefferson's wall as mutually benefiting both sides. The Court summarized its analysis of the history of the First Amendment based upon Black and Rutledge, observing,

> [T]he "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can ... pass laws which aid one religion, aid all religions, or prefer one religion over another.

And that,

> ...no tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion (*Everson v. Board of Education*, 1946, pp. 15, 16).

The specific roots of the *Rosenberger* decision can be traced to the 1930s, when the U. S. Supreme Court began to develop its doctrine concerning the concept of the "public forum" [though it did not begin common usage of the term until the early 1970s] (Hartman, 1996). A traditional public forum is considered to be a place such as a public park or street, where there is a history of free public speech unencumbered by the state, except where absolutely necessary to preserve public peace and safety. The less a purported forum resembles a public park or street, the less likely its users would be to enjoy full First Amendment protection. The Court also described "nontraditional" public fora: places such as public buildings the government is not compelled to open up to public speech, but where, once the government has done so once, it is obliged to offer on an equal basis to other speakers. Other publicly-financed places, such as prisons, courtrooms, and university dormitories, remain non-public spaces even though the taxpayers pay for them.

By the 1940s, the focus of the Supreme Court began to move from access to public spaces to use of other public facilities. In *Everson v. Board of Education* (1946) from which the author already has quoted, above, the U.S. Supreme Court upheld a New Jersey law that required public school systems to furnish bus transportation to students in their districts who attended parochial schools, reasoning that a parent's choice of public or private school might hinge largely on the availability of transportation.

A quarter-century later, the *Lemon v. Kurtzman* (1971) decision marked the start of an era in which the Court began to address the presence of non-secular speech in public fora. It also represented somewhat of a softening of the Court's attitude towards religion and the state. As Justice Hugo Black wrote in his decision, the Establishment clause, "does not require the state to be [religion's] adversary" (Murray, 1997, p. 572). In *Lemon*, the justices established a test whose purpose was to determine whether or not the government violated the Establishment clause of the First Amendment by permitting religious activities in public spaces. The *Lemon* test has three parts: In order to be constitutional, the legislation or program at issue must have a secular purpose, it must have a primary or principal effect that neither advances nor inhibits religion, and it must not foster an excessive government entanglement with religion.

A review of cases suitable for analysis under the *Lemon* test by Lilly (1996) found slightly more programs and laws overturned for failing to meet the test (22) than upheld (16). For half of the cases overturned, the neutrality toward religion prong was the deciding factor. Interestingly, Lilly found four cases that should have used *Lemon* but didn't, including *Rosenberger*.

One significant case to use the *Lemon* test was *Widmar v. Vincent* (1981). At issue was a request by a religious organization, Cornerstone, to use buildings at the University of Missouri at Kansas City for its meetings. When UMKC officials denied the request, Cornerstone sued. The Court ruled that concerns university officials had for possible violations of the Establishment Clause were in sufficiently compelling to justify the violation of the group's free speech rights. Hartman (1996) observes that, while the Court emphasized the narrow basis for its decision, it subsequently extended the *Widmar* rationale beyond campus religious groups to include religious speakers on campus, religious high school groups, and religious community groups.

One significant extension of *Widmar* came in *Lamb's Chapel v. Center Moriches Union Free School District* (1993), in which the Court granted use of public school buildings to an evangelical group that wanted to show a six-part film series on family life from a Christian perspective. Under New York state law, school districts could make buildings available for use by community groups, but not for religious groups. The plaintiffs argued that one of the groups granted use by the Center Moriches district was what they described as a "New Age religious group," and that therefore the door had been opened to their use. The Court found that Lamb's Chapel had been denied use solely because its film series had a religious point of view.

Similarly, the Court has ruled that school districts establish limited public fora when they allow formation of non-curricular student groups, and thus cannot deny permission for students to form religious clubs. In *Board of Education of the Westside Community Schools v. Mergens* (1990), the Court concluded that such clubs would not violate the Establishment clause because, first, there is a difference between government speech endorsing religion and the government's

allowing of private speech endorsing religion; second, meetings were during non-class time and teachers were not to be present; and, third, the club would not be a special case, but one of many clubs permitted by the district.

Another set of Supreme Court decisions beginning in the late-1970s began developing what Hamblin (2000) termed its "Money is Speech" Doctrine. In *Abood v. Detroit Broad of Education*, the Court sided with a group of public school employees who were not members of a labor union, but who were forced to pay fees to the union as compensation for the benefits they derived from the organization's collective bargaining efforts on their behalf. The Court found that, when those fees helped fund political causes to which the employees objected, they amounted to compelled speech which the First Amendment disallows. As support for this conclusion, the Court quoted James Madison:

> "[T]he same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever[.]"
>
> (p. 234-35).

Rosenberger v. University of Virginia

In some respects, *Rosenberger* was an unusual case for the Court to accept for review. For one thing, it was not broadly generalizable. Unlike most universities, the University of Virginia, rather than funding some student groups themselves, instead used its Student Activities Fund to pay the printing cost of their newsletters and event publicity. The groups, known to the

University as Contracted Independent Organizations (CIOs), must include in printed materials a statement of their independence from the University.

One CIO, Wide-Awake Productions (WAP), was denied funding for its newspaper, Wide Awake: A Christian Perspective at the University of Virginia, because it "primarily promotes or manifests a particular belief in or about a deity or an ultimate reality" (*Rosenberger*, 1995, p. 2515) and thus violated university policy. The group sued the university in U.S. District Court, alleging its First Amendment rights were violated. The court granted summary judgment to the university, and WAP appealed. The Fourth Circuit Court of Appeals upheld the judgment, conceding that the university had violated the First Amendment's Speech Clause, but finding that violation necessary to complying with the Establishment clause (*Rosenberger*, 1995). In reversing the appellate court, the U.S. Supreme Court found that paying an outside contractor to provide facilities, in this case, printing facilities, was not materially different from making its own facilities available on a non-discriminatory basis, as mandated in both *Widmar* and *Mergens*:

> There is no difference in logic or principle, and no difference of constitutional significance, between a school using its funds to operate a facility to which students have access, and a school paying a third-party contractor to operate the facility on its behalf [...] If a religious student organization obtained access on that religion-neutral basis and used a computer to compose or a printer or copy machine to print speech with a religious content or viewpoint, the State's action in providing the group

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> with access would no more violate the Establishment Clause than would giving those groups access to an assembly hall (p. 2524).

Writing for the majority, Justice Anthony Kennedy argued the University of Virginia's student activity funding system was in this case distinct from direct state funding of religion since it purported to be content neutral. Since *Wide Awake* amounted to a forum for the discussion of ideas, denying it funding was tantamount to impermissible state discrimination against a particular viewpoint.

The Response to *Rosenberger*

Some religiously-oriented student groups on other campuses, buoyed by the decision, petitioned their university administrations for broad organizational funding, citing the *Rosenberger* decision as precedent. Internet listservs around the country buzzed with inquiries from administrators concerned with the legal consequences both of granting the requests and of turning them down.

Generally speaking, administrators' concerns had less to do with what the Court had said in *Rosenberger* than with what it hadn't said. Two scholars of the high education system noted that the decision had left more questions unanswered than it actually had answered:

> For example, in addition to prohibitions on funding religious activities, many public colleges and universities also have a tradition of not funding political activities. Does *Rosenberger* invalidate that prohibition? This is no small issue, since the funding of electioneering and lobbying speech may entangle a public institution's tax-exempt status under section 501(c)(3) of the

Internal Revenue Service Code, which, in large measure, prohibits tax-exempt organizations from engaging in such activities (Gibbs & Gehring, 1996, p. 4).

About the only certain conclusion from the case, the authors claimed, was that the Court had mandated colleges and universities treat student religious publications as a subset of student general publications. Institutions appear to have been left with the option of abolishing all student activity fees, continue them while abolishing content-based speech restrictions, allow the number of funded activities to grow, or make the speech part of the student fees voluntary.

The University of Virginia itself reacted by permitting its students a partial refund of their student activity fees if they objected to activities that were funded. Under the policy, students could request a refund of 25 per cent of their activities fees if they identify a group or type of activity being supported with which they have philosophical objections. The university also now includes both religious and political activities as those to be funded (Jaschik, 1996).

At Miami University in southwest Ohio, student legislators hurriedly introduced what they called the "Marketplace of Ideas" Act on November first of 1995. The bill would have amended university student activities funding policies to include organizations whose primary purpose was religious in nature. University policy already recognized such organizations and granted them meeting space, but prohibited student activities money from going to them. Instead, Student Affairs Council, a policy-making body comprising students, faculty, and staff, appointed a committee to study the proposal and its potential consequences. In January, the SAC adopted the committee's recommendation to try out a Student Initiatives Fund, from which the speech-related activities of religious and partisan-political could be reimbursed. The two-year

trial subsequently was extended and the fund eventually was expanded and incorporated into the regular student organizations funding process.

Miami's moves failed to mollify those who believed the U. S. Supreme Court had signaled in *Rosenberger* a willingness to reconsider the constitutionality of direct funding by state universities of religious organizations. On September 29, 1998, four Christian groups[2] and eleven Miami students sued the university's president, vice-president for student affairs, and dean of students in U.S. District Court, seeking monetary damages and an end to the current student organizations funding system. That system collects approximately $34 from each fulltime undergraduate student to fund more than 120 student groups, but not those whose primary purpose is partisan politics or sectarian religion. The university indicated it would vigorously defend its policy (Fisher, 1998).

Reaction to *Rosenberger* from the religious community, perhaps remarkably, was mixed. While attorney Jay Sekulow, whose legal foundation is funded by Pat Robertson's Christian Coalition, predicted triumphantly that the ruling would clear the way for public funding of sectarian private schools through vouchers, J. Brent Walker of the Baptist Joint Committee on Public Affairs was much more Madisonian and much less sanguine:

> This is a sad day for religious liberty. For the first time, the Supreme Court has sanctioned funding of religion with public funds. Our founders understood that, for religion to be meaningful, it must be voluntary, freed from government assistance and control (Doerr, 1995, p. 36).

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Largely omitted from the criticisms of the decision by the religious community, and particularly the Judeo-Christian religious community, was the possibility that public funding of religious expression those communities favored would frequently be accompanied by public funding of religious expression they opposed, such as that from other, less-dominant faiths in North America: Islam, Hindu, Shinto, and Confucian, to name a few.

Unrealized further complications: University of Wisconsin v. *Southworth*

Following Rosenberger, there were concerns that the entire student organization funding system in place at 70 per cent (Schmidt, 1999) of public college and universities around the country, first jolted by the requirement that religious and political speech not be excluded, would completely collapse if students not agreeing with those viewpoints could refuse to financially support them. Justice Sandra Day O'Connor, in her concurrence to *Rosenberger*, conceded that this was a possibility.

And, in fact, six self-described conservative Christian students at the University of Wisconsin sued to abolish the funding system at the Madison campus, citing their First Amendment rights and the ideological objections they had to 18 campus organizations, including the Campus Women's Center and the Lesbian, Gay, Bisexual, and Transgender Campus Center (*Southworth v. Grebe*, 1998). The Seventh Circuit U. S. Court of Appeals found in the students' favor, saying the funding of the organizations was not germane to the university's mission, and requiring mandatory fees paid by students to support them be refunded upon request. Many student activists saw the decision as an attempt to silence the political left by denying needed operating money to minority students or those with unpopular views.

In its much-anticipated decision, the U. S. Supreme Court reversed the Appeals panel, concluding were germane and thus not unconstitutional *per se*, provided the distribution system (a) served the mission of the university by providing the means for extracurricular discussions of philosophical, religious, scientific, social, and political subjects, and (b) was designed in such a way as to reasonably assure viewpoint-neutrality (*University of Wisconsin v. Southworth, 2000).*

For their tests of germaneness to the university's mission, both courts relied up a three-part test the Supreme Court had crafted in *Lehnert v. Ferris Faculty Association* (1991). Under the *Lehnert* test, compelled funding is constitutional if

> (1) there is a legitimate government interest in compelling the funding, and if the specifically challenged funding is "germane to that interest,"
>
> (2) the compelled funding is essential to the legitimate government interest in prong number 1, and
>
> (3) compelled funding does not impose a significant burden on the free speech of the objecting party (Hamblin, 200, p. 377).

Discussion

While the U. S. Supreme Court's decision in the *University of Wisconsin* seems to have removed from consideration one of the major criticisms of the impact of *Rosenberger* upon First Amendment jurisprudence, several others remain. Most free speech scholars and observers of the Court agree that *Rosenberger* signaled a significant change in the Court's view of the Establishment clause; they disagree on whether or not that change brings current precedent closer to the original intent of the Framers, and whether or not it will create conflicts with other long-

established case law. The remaining criticisms may be divided into three groups: those that argue *Rosenberger* has had the effect of weakening the Establishment clause, particularly since it paves the way for direct taxpayer funding of religion; those who believe the Court erroneously has equated religious belief with political viewpoint; and those who say Rosenberger represents an unwarranted departure from a variety of other Supreme Court precedents.

***Rosenberger* Weakens the Establishment Clause**

In an area of constitutional law with few absolutes, as Murray (1997) has noted, the Supreme Court had observed one for the half-century following the *Everson* case: the government may not fund religion or religious institutions. There is little indication that hostility to religion in general was at the heart of this fidelity to principle (unless one counts Jefferson's suspicions regarding religion's influence on the state) but, rather, avoidance of showing preference to one religion over another.

In the wake of *Rosenberger*, this concern goes beyond conjecture. When the decision was announced, the University of Virginia, the defendant in the case, complied by revising its funding criteria. From that point on, funding was to be determined on the basis of , "(1) the size of the organization; (2) the financial self-sufficiency of the group; and (3) the university-wide benefit of the activity" (Murray, 1997, pp. 609-610). As Murray observes, those guidelines put religions with fewer campus adherents at a significant disadvantage to mainline faiths when it came to getting their viewpoints disseminated.

Because the Court repeatedly emphasized the narrowness of its holding – that public universities that fund the speech activities of some campus groups cannot not fund certain others

simply because they espouse a religious or partisan political viewpoint – Hartman (1996) doesn't see *Rosenberger* so much as establishing a new right under the First Amendment as carving out a larger exception to an existing prohibition. And the Court, he believes, would not have enlarged the exception were it not to avoid chilling the free speech rights of the students. Unfortunately, that distinction may be lost on proponents of public funding of campus religious groups, or it may be marginalized by them to the extent that there will be further confusion and conflict created over what truly constitutes establishment of religion.

Laycock (1992) is much less measured in his assessment. He characterizes the subsidies permitted under *Rosenberger* as having the effect of putting religions in competition for government resources, and assuring that the dominant religions will get most of them. That sends the message to minority religions that they are less worthy of public recognition and less entitled to government support.

Whether one believes *Rosenberger* to represent a major departure from past Court practice regarding religious groups and public institutions and facilities seems to depend in large degree on how one compares allowing equal access by religious and secular organizations to facilities such as classroom buildings, that are already in existence and that have a primary use largely distinct from those of the groups that make secondary use of them, to direct cash payments to the organizations' accounts or creditors. For Salzberg (1996), the difference is significant. *Lamb's Chapel*, he argues, protected both the Establishment clause and individuals' free speech rights, because it simply meant granting a religious organization access to a public facility so it could participate in an exchange of viewpoints. *Rosenberger*, on the other hand,

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violated the traditional ban on government subsidies to religion because a religious organization sought and was granted government funds to proselytize.

The distinction is not as easy to see, though, when the public facility to which a religious organization is granted access is an expendable. When, 50 years before *Rosenberger*, the Court ruled public school districts must furnish bus service to parochial schools, the buses might have been the same ones used to take public school students to their buildings. But, had the districts arranged for outside contractors to provide bus service, the provision of routes to parochial schools almost certainly would have incurred a substantial additional cost. Is the distinction between paying the printing costs of a campus religious organization more onerous than paying the busing costs of parochial school children?

An Upset Balance: Religion as Viewpoint

A second vector for criticism of the *Rosenberger* decision stems from the logical difficulties inherent in considering tenets of a particular religious faith to be equivalent to a political viewpoint under the First Amendment. Removed from the context of the U. S. Constitution, equating the two seems to make sense. Religious beliefs are held by individuals much as opinions and political ideologies are; they may be argued and evaluated against a variety of criteria as a way to ascertain their worth. But placed in the context of the First Amendment, this equivalence creates irreconcilable problems, since the government cannot promote religion in general, nor any particular sect.

Commentators such as Lilly (1996) and Corwin (1996) see the characterization of religious belief as viewpoint and emphasizing the need for government to take a neutral stance

regarding its dissemination to be positive developments, for the pragmatic reason that both would encourage the inclusion of religious groups and activities among programs funded by public universities and school districts and other governmental entities, as well as remove the spectre of lawsuits over violations of the Establishment clause that prevent public institutions from funding more varied organizations.

The difficulty with this position is that it ignores differences in the nature of the attachment of individuals to their political beliefs on one hand and to religious beliefs on the other. According to Holmes (1988), no issue is considered more worth avoiding than religion, because sectarianism is inherently divisive. And divisiveness is an evil the Establishment clause was written to avoid. That may seem a paternalistic device designed to keep in line people incapable of handling the full measure of their First Amendment freedoms, but Sadurski (1997) argues that such regulations are designed more to constrain absolute individual freedom to avoid a greater harm to society.

Religion and politics both are subject matter groupings that, in turn, comprise various viewpoints. A second problem with the *Rosenberger* decision, says Sadurski (1997) is that it fails to distinguish between subject matter regulation and viewpoint regulation. Instead, he asserts, Justice Kennedy considers them both impermissible content regulation. The problem is that, failing to distinguish between them creates an internal dilemma that cannot be resolved. On the one hand, as Sadurski (1997) observes, Kennedy writes that the student publication at the center of the case merely is about religion (subject matter), and therefore doesn't threaten the Establishment clause because it is neutral. On the other hand, he also claims the publication

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takes a particular sectarian opinion (viewpoint), and therefore the University would be guilty of one-sidedness if it didn't fund it. The Court, Sadurski declares, cannot have it both ways.

Abandonment of Precedent

The third type of major criticism the *Rosenberger* decision has attracted has been the accusation that the Court failed to follow its own precedents in reaching it. To be fair, the case law concerning many issues – those stemming from constitutional rights and liberties especially – can be lengthy and occasionally convoluted, and the U. S. legal system was intended to be dynamic in order to minimize the need for continual modifications to statutory and constitutional law. Thus, some deviation from established precedent can be expected, if not always excused. That said, *Rosenberger* did mark several notable departures. Among the most striking was the failure to use the *Lemon* test to determine if the university would violate the Establishment clause in funding W.A.P. The Court gave no reason for this departure, but instead used the more permissive and less defined standard of being "neutral toward religion" (White, 1995, p. B-2). White declared this move, "appears to signal greater tolerance for government support of religion" (p. B-2).

A second major deviation was noted, in passing, by the Seventh Circuit U. S. Court of Appeals panel that ruled in *Southworth v. Grebe* (1998). It observed that Supreme Court First Amendment jurisprudence had established two corollaries to the right to speak: the right to silence and the right not to fund the speech of others. But while the panel conceded that the Court never had specifically applied the latter corollary to a case involving religious organizations on public university campuses, the panel itself anticipated that application in ruling

that students could withhold activity fees that otherwise would fund political and religious groups. Hamblin (2000) contends that the combination of the Court's permitting fee-funded religious organizations and its reversal of the Court of Appeals in *Southworth*,

> ...compounds its earlier error [ ] because the final result is to compel public university students to contribute their personal funds to the coffers of religious and ideological groups to which they are opposed (p. 382).

Conclusions

The decision by the U. S. Supreme Court in *Rosenberger v. University of Virginia* (1995) is problematic not just for the difficulties it has presented public colleges and universities in their administration of funding for valuable student organizations on their campuses or for the possible threat it poses to the future of that funding, but also for its numerous deviations from longstanding Court doctrine on Church-State relations. It tips the precarious balance between the two often-opposed clauses in the First Amendment, the Establishment clause and the Free Speech clause, toward state-funding of religion, and in the process appears to discard a quarter-century-old test of the necessity of such funding to achievement of a compelling state interest. It equates religious belief with political opinion to legitimize the former's place in public fora, while at the same time treating it as a monolith to evade charges of sectarian favoritism. And, it and its progeny compel state universities to fund religious speech and their students to foot the bill.

Whether the intent of the Establishment clause was to, as Jefferson advocated, protect the state from religion, or, as Madison favored, protect each from the other, neither cause seems to

be advanced by *Rosenberger*. In the decision's wake, student religious groups are, for the first time, able to tap the public treasury, and state colleges and universities, through their student organization funding systems, are likely to be the unwitting partners with major religious sects in perpetuating the visibility of mainline denominations at the expense of minority faiths. With the Court's having embarked on this new path, the fear is that the Court may use one of the pending lawsuits by religious organizations against public universities over denied funding to allow public subsidy not just of religious speech, but religious groups' non-speech acts as well.

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Author Notes

[1] It is generally accepted that the wall metaphor was the Court's, not Jefferson's, and that the term first was employed by the Court in 1946 (Davis, 1996).

[2]The groups were identified as For the Love of God and Sigma Theta Epsilon, both of which have received funding from the university, and The Christian Council and The Christian Coalition, neither of which has received funding (Fisher, 1998).